PRESIDENT CASSELL: Delegate Oulahan?

MR. OULAHAN: My personal privilege, Mr. President, is this: I suggest that the federal Constitution is a better document than the document here, because I believe that the bill of rights proposed here is flawed and that the federal Constitution happens to be much better and will give us better protection.

MR. KAMENY: A point of order, Mr. Chair.

PRESIDENT CASSELL: Your point, sir?

MR. KAMENY: Delegate Oulahan, if you look at what he has proposed and what he has stated, has provided no substitute language. The Fifth and Sixth Amendments -- and I can read them to you if it's appropriate, although I prefer not to -- cover all of them. Except minimally, they are not germane to this. We are buying more verbiage than is in here, most of it having nothing to do with what we are discussing. He is not offering an amendment, and therefore he is out of order.

PRESIDENT CASSELL: Delegate Oulahan, you do have the right to delete. Why don't you divide your motion? There is some question as to whether the amendment really speaks to the section under discussion. Would you like to move to delete it?

ER REPORTING CO., INC.
Massachusetts Avenue, N.E.
hington, D.C. 20002
) 546-6666

MR. OULAHAN: I thought I did, Mr. Chairman. I moved to strike, which is the same as delete, and substitute therefor the Fifth Amendment, which deals with grand jury procedures. That was my motion.

PRESIDENT CASSELL: The Chair has requested that you divide that into --

MR. OULAHAN: I'd be very glad to divide it.

PRESIDENT CASSELL: Okay. The motion on the floor now is to strike Section 7, as written. Is there any discussion on that?

MR. MARCUS: We'll discuss it, but we'll wait.

PRESIDENT CASSELL: Delegate Robinson?

MR. ROBINSON: Mr. President, I stand to also ask that Section 7 be struck. However, I should like to offer some additional language for Section 7 at the appropriate time. I would replace it with some substitute language.

PRESIDENT CASSELL: A response from the committee, delegate Kameny? Who speaks for delegate Kameny?

MR. KAMENY: Delegate Marcus.

PRESIDENT CASSELL: We will follow that procedure so that the record shows that we're following our procedure.

MR. KAMENY: Yes.

PRESIDENT CASSELL: Who is it that speaks for you?

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
202) 546-6666

MR. MARCUS: Once again, we're being asked to take a leap of faith that we're going to strike grand jury procedures, which is the entree point for indictment in our criminal justice system, and buy a package which we have not yet seen at any point.

Instead of offering a constructive amendment, delegate Oulahan has, for the second time, offered a portion of the Constitution of the United States -- admittedly, a brilliant document; admittedly, a document which is far beyond the power of this particular committee to put together.

However, the amendments that delegate Oulahan is offering have very little relevance to the particular sections that he's offering them in place of. Therefore, to delete this particular language at this time serves no purpose, except to leave us without any kind of discussion regarding how we actually begin the indictment process or the criminal justice process.

It is subterfuge, I would offer to you, to get us to vacate whatever language exists here, because delegate Oulahan once again is arguing that somehow the language we have in here somehow sinks the foundation of western civilization, which, delegate Oulahan, simply is not true.

MR. BALDWIN: Time.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

PRESIDENT CASSELL: Delegate Oulahan, would you speak to your motion?

MR. OULAHAN: Yes.

PRESIDENT CASSELL: We're beginning to bog down a bit. I'd like to speed this up, get the rationale on the floor, and vote it up or down.

MR. OULAHAN: On pages 16 and 17 of my amendments, I have laid out the rationale. I pointed out that this proposal of the committee will destroy the grand jury system in the District of Columbia.

MR. KAMENY: No, no.

MR. OULAHAN: It will place the prosecution of grand jury cases in the hands of an independent council that is responsible to no one. It will allow counsel to be present in the grand jury at all times. There are improvements that have to be made in the grand jury system; they are being looked at all over the United States. But this is not the place to make them. We can make them, eventually, when a new grand jury system is adopted.

This is just another one of those nails into the present criminal justice system in the District of Columbia. Therefore, I urge you to strike it.

PRESIDENT CASSELL: Who speaks against this

amendment?

(No response.)

PRESIDENT CASSELL: Who speaks against this amendment? Ms. Graham?

MS. GRAHAM: I wanted to ask a question, Mr. President. I'd like to ask the committee who would determine whether the grand jury is of sound mind or not.

PRESIDENT CASSELL: This amendment comes from delegate Oulahan, and that's what we should be speaking to.

MS. GRAHAM: I'll ask it later.

PRESIDENT CASSELL: Ladies and gentlemen, the court reporter has had to absent herself momentarily for certain important reasons. She has left her recorder on. You will not be able to have a transcript if we are not very, very quiet. It's a very small, portable recorder. We must be absolutely quiet or nothing that happens while she is not here speaking into her mask will be recorded. Thank you very much.

Delegate Garner?

MR. GARNER: Thank you, Mr. Chairman. I rise to speak in favor of the proposal by delegate Oulahan. While the adoption of the committee's language would not shake western civilization, it will shake the drive for statehood. That is the issue before us, and I urge you to support the

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

proposal.

PRESIDENT CASSELL: The committee?

MR. KAMENY: Thank you. I wish to respond a little bit more to delegate Oulahan. Each time a change is made, he seems to operate on the basis that any change destroys the world. To change the current criminal justice system in the District of Columbia is not to destroy it; it is to improve it.

Now, the grand jury system, as those who are familiar with it know, was established a long time ago as a fundamental protection to the citizenry. It has declined; it has been abused. It has lost its original protective purpose and now, as is widely recognized, is simply a tool of the prosecutors in most instances.

Our proposed changes here are ones which have been adopted by other states -- they are not new -- including Hawaii. The presence of the independent prosecutor is critically important to preserving the rights of those citizens brought before the jury for possible indictment. The remainder of the provisions here are all intended to protect the citizenry.

Keep in mind that the consequences of a grand jury indictment can be devastating, if you have to stand trial for a felony. At the same time, nothing here will abridge the

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

ability of the state ultimately to prosecute malefactors.

Note that our final section permits the legislature to provide for the manner of operation of the grand jury. So, we are not setting forth a rigid, iron-clad prescription in the constitution. We are leaving it flexible, but we are addressing certain particular abuses that have grown up in recent decades and generations, and addressing them very, very carefully in a narrowly drawn manner.

One final question that has been raised by several delegates on line 6 -- the question about "sound mind, and representative of the adult community" -- obviously, the adult community includes all people, including those who are not of sound mind. Therefore, we wanted to say that besides being generally representative of the adult community, you also have to be of sound mind as well, and that is why that is there.

I urge you, therefore, to defeat the Oulahan proposal and to accept the committee proposal. Thank you very much.

PRESIDENT CASSELL: Delegates, we have had two persons to speak for the amendment and two to speak against it. They have been long and eloquent and very clear. I would like to vote. I don't believe there's any more we need to say about that. We are on Section 7; we have 23 to do tonight. We have 23 to do tonight. The time is 9:19. Please, may we

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

vote on this? May we vote? Is there still a need -- delegate Warren?

MS. WARREN: Mr. Chair, could I hear what the counsel has to say?

PRESIDENT CASSELL: There has been a request to hear the counsel on this to assist in making the decision. Mr. Thomas?

MR. THOMAS: I apologize for being late. I'd like to ask one question pertaining to this section that may have been discussed already.

PRESIDENT CASSELL: Do you know the motion on the floor?

MR. THOMAS: Yes, I do.

PRESIDENT CASSELL: All right.

MR. THOMAS: Would somebody tell me -- and please excuse me if it has been discussed already -- in paragraph (b), who is the independent, non-government counsel? What is he expected to do, et cetera?

MR. MARCUS: As the counsel knows, grand juries have as their counsel someone who advises them on the legal forms of law. Very often, states attach that legal counsel to the prosecutor's office. It happens that in several states, including Hawaii, and mentioned in the Hawaii constitution, the

MILLER REPORTING CO., INC.
320 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 546-6666

counsel is an independent counsel who is not from the prosecutor's office. In fact, his job is very often to do the same sort of thing that you may do in regard to this convention.

MR. THOMAS: Is he acting as a person who brings the charges?

MR. MARCUS: No.

MR. THOMAS: All right. That's all I have to say for now. That's all the information I need for now.

PRESIDENT CASSELL: All right. The motion on the floor is to delete Section 7. Those in favor of deleting Section 7, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

MS. CORN: Abstain.

PRESIDENT CASSELL: Let me see the hands of those who are in favor of deletion.

MR. COOPER: Five.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Twenty-five.

PRESIDENT CASSELL: Those abstaining?

MR. COOPER: Three.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

PRESIDENT CASSELL: Okay, the motion loses. Delegate Corn, an amendment?

MS. CORN: Yes. I move on line 6 to strike the words "adult community" and add the words, after "sound mind," "at least 18 years old," and where the words "adult community" are, strike them and put in the word "state."

So, the line will read, "Grand jurors shall be of sound mind, at least 18 years old, and representative of the state." I have a very specific reason for it.

PRESIDENT CASSELL: Mr. Secretary, do you have that?

MR. COOPER: Yes.

MS. CORN: May I speak to my motion, please?

PRESIDENT CASSELL: Could you read that back, Mr. Secretary?

MR. COOPER: The amendment would be to line 6. Insert after the word "mind," "at least 18 years old." Strike the words "adult community" and substitute in their place the word "state."

PRESIDENT CASSELL: Substitute in place of the word "adult," "state?"

MR. COOPER: For "adult community," "state."

MS. CORN: The line will read, "Grand jurors shall be of sound mind, at least 18 years old, and representative of

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

the state."

PRESIDENT CASSELL: Yes. Speak to your amendment.

MS. CORN: For "adult," I've used "at least 18 years old." But the reason I mainly have made this is, instead of "community," I used the word "state," and there is a very specific reason for it.

If, for instance, you are tried by a jury and let's say you come from an all-white neighborhood and there's one black or one Hispanic, you can claim, "Well, I'm not being tried by a jury that is representative of my community."

The reason I brought this up is Mr. Margiota, when he was tried in the state of New York for political crimes, claimed that the jury was not of his peers, because the New York State Constitution was similarly worded. Therefore, if you take out the word "community" here and put in "state," whether the jury is made up of -- I don't care what color people or nationality, or whatever -- it'll be representative of the state. And you cannot find a way then for some outright criminal to say, "Well, I have not been judged by a jury who is representative of my community or my peers," or any other sort of ridiculous loophole. Therefore, I feel very strongly about this point.

PRESIDENT CASSELL: Discussion? Delegate Kameny?

MR. KAMENY: Yes. As I understand delegate Corn's motion, it is irrelevant. We are discussing grand juries and she is responding in terms of petty juries.

MS. CORN: No.

MR. KAMENY: Grand juries do not try you, they do not hear trials, they do not judge you. That is not the function of grand juries. I would suggest that delegate Corn learn what grand juries are all about before she puts in amendments that are relevant to petty juries. Therefore, I suggest that you vote down her amendment.

PRESIDENT CASSELL: Delegate Kameny, let me just ask of you and everybody, to defer from this point on from making references to the wisdom or the motives of people. It would help a great deal. Thank you.

MS. CORN: Thank you very much, Mr. President.

PRESIDENT CASSELL: Further discussion on the Corn amendment?

(No response.)

PRESIDENT CASSELL: There being no discussion, those in favor of the Corn amendment, indicate by saying aye.

(There were two "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The motion loses. Delegate Love?

MR. LOVE: Mr. Chair, for the record I would like to ask the committee -- the final sentence says, "Transcripts of grand jury proceedings shall be made available in timely fashion before trial to persons prosecuted" --

PRESIDENT CASSELL: I'm sorry. Where are you reading from?

MR. LOVE: Lines 11, 12 and 13.

PRESIDENT CASSELL: Proceed.

MR. LOVE: I want to ask the committee, is there a limitation on who these transcripts are available to? I mean, can anybody come in and get a transcript? Is it limited to the person, and is it limited to what that person said, or can they find out everything the grand jury did? I think the record has to be clear on this -- very clear.

PRESIDENT CASSELL: The committee, delegate Kameny?

MR. KAMENY: Delegate Marcus will respond.

PRESIDENT CASSELL: Delegate Marcus?

MR. KAMENY: Thank you.

MR. MARCUS: Thank you, delegate Love. That's a good question. The answer is that transcripts of grand jury

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

proceedings are already available under the Jenks material, which is generally given to the defendant during trial, at which time the defense counsel has to jump up, grab this material and run downstairs and dash through it, looking for material or evidence that they can use or testimony that they can use during the actual trial itself, or cross-examination of individual witnesses who may have appeared before the grand jury and are now appearing before the petty jury.

In this instance, what we're saying is that the defendant should receive a copy of the testimony that had gone down in the grand jury before the actual trial takes place, so there doesn't have to be a recess during the trial, during which his or her counsel jumps up, runs down to the coffee shop, and then tries to go through a very cumbersome procedure in that regard.

PRESIDENT CASSELL: The Chair erred in allowing that question, since the question does not speak to the amendment which is on the floor, which is the amendment by delegate Corn on line 6.

MR. KAMENY: No; that was defeated.

MR. COATES: That was defeated, sir.

PRESIDENT CASSELL: All right. The Chair wasn't paying attention. So, we're back to discussing this question.

LER REPORTING CO., INC.
) Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

MR. LOVE: I'm sorry. I didn't quite -- can the defendant get material that does not relate to the defendant, or only the material that relates to the defendant?

MR. MARCUS: The defendant just gets the material which relates to the witnesses who testified in the grand jury specifically to his or her case.

MR. LOVE: Thank you. I have one another question. In line 3, "Therefore, a person shall be tried for an offense carrying a penalty of imprisonment exceeding one year only upon indictment by a grand jury" -- can the defendant waive that? In some cases, defendants want to plea-bargain; they do not want to go before an indictment. I want to make clear that this would allow a defendant the right to waive that if they so wanted.

MR. MARCUS: Yes.

MR. LOVE: Thank you.

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: Mr. President, upon reading the counsel's paragraphs here, I wonder if it would be helpful to us in our deliberations to have him explain Section 7.

PRESIDENT CASSELL: Yes.

MS. SIMMONS: Particularly, I reference paragraph two and the historical purpose of grand juries, if he would

share that.

PRESIDENT CASSELL: Thank you. Mr. Thomas?

MR. THOMAS: Perhaps it would be helpful to many of you to know the background of grand juries, and hopefully it will help you in deciding how to vote in this matter. The reason grand juries are so restrictive right now is that it's supposed to be a secret process in which a cross-section of the community can hear all the charges -- hearsay, or whatever -- just hear all the charges, sort the evidence, and decide whether to indict someone or not indict someone.

As the committee stated earlier, this does lead to some abuse. The main argument is that the prosecutor controls the grand jury and takes them wherever he wants them to go. I believe that the provisions in Section 7 are to alleviate some of these abuses.

However, one effect of it is that it may affect the overall secrecy and freedom which a grand jury now has to operate within itself. It is supposed to hear all the evidence that it can. All kinds of evidence is let in so they won't be restricted by various rules of evidence. Presence of counsel may affect this and it may not affect it. However, that's the purpose of the grand jury.

MS. SIMMONS: Mr. President, through the Chair, may

LER REPORTING CO., INC.
) Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

I make further inquiry of the counsel, because I wanted to hear that?

PRESIDENT CASSELL: Yes.

MS. SIMMONS: Is it not a fact that the language in Section 7(b), in fact, obviates the purpose of the grand jury?

MR. THOMAS: Well, the purpose for which they are offering section (b) is to have someone in there who is not -- remember the abuse that I mentioned concerning the prosecutor. The government can, or has the power to carry the grand jury. It is supposed to only give them evidence with which they can come up with an indictment. That's the chief complaint.

Their purpose in putting (b) in here is to have someone there who doesn't have an interest in providing or getting indictments.

MS. SIMMONS: So, your "yes or no" answer is no?

MR. THOMAS: I'm inclined to say no; I'm inclined to say no. It could have a good effect as far as the independent, non-government counsel stating things that are obviously out of line in presenting evidence, et cetera. My main concern, though, is that it's not defined here as to what the independent, non-government counsel will do. It just states that the grand jury will have his assistance.

I also worry that the section is very wordy for a

HILLER REPORTING CO., INC.
920 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 546-6666

bill of rights.

PRESIDENT CASSELL: Is very what?

MR. THOMAS: It's very wordy.

MR. KAMENY: That's not a legal concern; that's style and drafting.

PRESIDENT CASSELL: Delegate Kameny, you will refrain from interrupting counsel.

Further questions for the counsel?

MS. SIMMONS: Yes. Through the President, do I understand that with the transcript available before the trial, then that means confidential witnesses and hearsay and all of these people who have said something then do have that at their disposal --

MR. THOMAS: Right, right. The argument on the other side --

PRESIDENT CASSELL: Hold it. She didn't finish her question.

MR. THOMAS: I'm sorry.

MS. SIMMONS: My question was does that then mean that all of this data is available before the trial -- all the confidential witnesses, information, hearsay, and that whole litany of things he suggested?

MR. THOMAS: Right. The people who would be against

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

this section would state that that defeats the secrecy of grand jury proceedings and let's things out that we may not necessarily want out. The committee would respond that, right now, you're not giving the transcript of a witness' testimony until after the prosecutor has conducted direct testimony, and that that is too late and there should be a more reasonable time for him to be able to assemble the evidence.

MS. SIMMONS: And what is your guidance to this body?

MR. THOMAS: Well, just to let you know what the issues are.

MS. SIMMONS: Thank you.

PRESIDENT CASSELL: Thank you, Ms. Simmons. Delegate Kameny?

MR. KAMENY: We had some statements in counsel's commentary here which raised some questions.

PRESIDENT CASSELL: Excuse me, delegate Kameny. Do you want to make the last statement? There was a hand that I did not recognize. Do you want to continue now?

MR. KAMENY: My intent at the moment was to respond quickly to general counsel. I don't know what is in order. I would defer to whatever your wishes are.

PRESIDENT CASSELL: If you want to respond to that, fine. I want to recognize delegate Clark and then I want to

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

let you close, if that's what you want to do.

MR. KAMENY: Either I or somebody will close.

PRESIDENT CASSELL: All right.

MR. KAMENY: Our general counsel has bought without questioning the statement, which is rather horrendous, that grand jury deliberations are supposed to be secret. Who said they are supposed to be anything? They have always been secret.

Jury deliberations as distinguished from jury proceedings -- they are two different things. The deliberations, yes, and we did not question that; the proceedings, we felt to a certain degree, for people who are brought before a grand jury -- that some of this enshrouding in secrecy should, in fact, be relaxed to a certain extent, and that is, in fact, what we have done.

He raised the question of the function of the independent, non-governmental counsel. He will simply serve the functional role which is presently filled by the prosecutor. That is the answer to your question with specificity, but he will do it in a more neutral fashion -- an unbiased fashion.

Basically, that covers, without going on at great length, your points. But I think we need to look at all the

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

assumptions that we have made about grand juries, not buy them unquestioned, and that is what we have tried to do in order to avoid long-standing abuses.

PRESIDENT CASSELL: Delegate Kameny, I'm a bit confused. Are you saying now that that counsel will serve essentially the role of the prosecutor, but in a more fair way, not to represent the grand jury itself as opposed to the prosecutor himself?

MR. KAMENY: All right. He will supplement the role of the prosecutor to make sure that ultimately what the grand jury has received is a balanced presentation of the evidence that is there, not as so often happens where a prosecutor wants an indictment so he can proceed, there is really a one-sided presentation of evidence only which is --

PRESIDENT CASSELL: What is it in this section, though, that makes him more fair or more neutral?

MR. KAMENY: He is independent and non-government, and therefore is at least disinterested.

PRESIDENT CASSELL: Who engages him and who pays him?

MR. KAMENY: All of that is set out in section (c), "The legislature shall provide for the manner of operation of the grand jury."

PRESIDENT CASSELL: I see.

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

MR. KAMENY: We tried again not to legislate, except to establish, as much as we could, certain basic rights and to avoid certain abuses that have grown up. We tried to walk a middle line on this.

PRESIDENT CASSELL: There would be one counsel involved in the grand jury proceeding?

MR. KAMENY: There would the prosecutor and the independent counsel, as I understand it.

PRESIDENT CASSELL: All right. Further questions? Clark?

MR. CLARK: Mr. Chairman, I have a number of questions. I'm very concerned about this section. First, "sound mind" in line 6 -- is it the contemplation of the committee that if a grand juror were of unsound mind, the indictment would be subject to quashing?

MR. KAMENY: This provides a proviso on the criteria to be followed in the selection of the grand jury, but not a basis for appeal. Once the jury is there, it's there.

MR. CLARK: All right. In other words, if the grand jury were not representative of the adult community, it could not be challenged?

(Pause.)

PRESIDENT CASSELL: If there are questions you can't

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

respond to within 30 seconds or so, I think you should just say so and move on.

MR. KAMENY: I think, on that, we will have to move on for the moment.

MR. CLARK: All right. In line number 9, what are "other privileges?"

MR. KAMENY: Privileges which are currently recognized, such as, for example, the marital privilege, confidentiality privileges -- "privilege" privileges, if you will, of various kinds; doctor-patient relationships, and so on.

PRESIDENT CASSELL: Delegate Clark?

MR. CLARK: It's your contemplation, therefore, that the prosecutor or somebody shall advise the witnesses appearing before the grand jury of privileges that may be based upon relationships such as marriage, priest-penitent, doctor-patient, et cetera?

MR. KAMENY: Yes.

MR. CLARK: How, then, would the prosecutor know what those privileges are without knowing what the relationships are?

PRESIDENT CASSELL: Let me ask the committee if it would like to confer with counsel, whose purpose is to provide such assistance to us, before making these replies. If it

appears that it's going to take some time, let's leave this section and come back to it.

MR. CLARK: If we want to do that, that's all right.

PRESIDENT CASSELL: Well, I'm waiting for a response from the committee on that suggestion.

(Pause.)

PRESIDENT CASSELL: The Chair has decided to go on to Section 8 and allow the committee to confer with counsel. We don't want to lose any more time, all right?

MR. ROBINSON: Point of information.

PRESIDENT CASSELL: Delegate Robinson, point of information?

MR. ROBINSON: Yes, sir. Mr. Chair, I have a substitute amendment that I passed up to the amendment table, and I would like to know what happens to my amendment in view of the move that has just been made.

PRESIDENT CASSELL: Your amendment will be dealt with when we come back to Section 7.

Section 8, delegate Mason.

MR. MASON: I move Section 8, "Bail."

(The motion was duly seconded.)

PRESIDENT CASSELL: Section 8 has been moved and seconded. Discussion? Delegate Oulahan?

LLER REPORTING CO., INC.
) Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

MR. OULAHAN: I move to delete Section 8 and substitute the following taken from the federal Constitution. "Excessive bail shall not be required nor excessive fines imposed nor cruel or unusual punishment inflicted." Mr. Chair, although I --

PRESIDENT CASSELL: Sir, would you restate it? I didn't hear you. I don't know if anybody else heard you. Delegate Oulahan has the floor for an amendment.

MR. OULAHAN: I move to strike Section 8 and insert in lieu therefor the following taken from the federal Constitution. "Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishment inflicted."

(The motion was duly seconded.)

MR. OULAHAN: Mr. Chairman, could I make my statement now at the beginning rather than at the end?

PRESIDENT CASSELL: You may.

MR. OULAHAN: Ladies and gentlemen, you were not informed in the presentation made by the committee that if this Section 8 proposed by the committee is adopted, you no longer will be protected from the practice of having three and four-time bank robbers going before a judge, bail being set, and walking out scott-free to commit another crime.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

Under D. C. law at the present time, in addition to bail being a requirement so that the man comes back, if he is a danger to any person or to the community, his bail can be increased or he can go in preventive detention with all the other protections. If this Section 8 is adopted, you won't have those protections any more in the District of Columbia. That's why I say this section and others are destroying the criminal justice system, but they didn't tell you about that when they gave you their report.

PRESIDENT CASSELL: Mr. Kameny?

MR. KAMENY: Delegate Oulahan has done several things that are erroneous. First, he has invoked, as is his wont, the packaged Eighth Amendment, which addresses other matters not here and not germane.

The question of cruel and unusual punishment, he will find in our Section 10. So, once again, his motion in that respect is out of order. We are dealing here with bail; let us deal with bail. We have tried to sort things out a little bit better than the federal Constitution does.

Now, secondly, keep in mind, and keep in mind with care, that when you are arrested, you have not been convicted. You are innocent until proven guilty -- something cherished by all of us. Therefore, you cannot properly be deprived of any

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

of your rights, freedoms or liberties.

We have said with care -- and we anguished over parts of this at some length -- bail is a right, first of all, whose sole purpose, as it should be, is to assure the presence of the accused at trial -- that is what it is there for -- a trial which will then determine whether the accused is, in fact, guilty and subject, of course, to further penalties, including denial of freedom.

But at that point, the accused has the right to all of the rights that everyone else has, as long only as there is not a danger that he will exercise those rights in some such fashion as may prevent him from appearing at trial, like fleeing to the moon. And that is the purpose of bail.

Now, beyond that, we state that bail shall not be excessive within that proviso, and may take the form of a cash or property guarantee. This is a short, pointed provision which deals with bail alone, and not punishment, as delegate Oulahan would have us do, and addresses the issue properly. I urge you to adopt it.

PRESIDENT CASSELL: Further discussion? Long?

MR. LONG: Mr. President, the report from our general counsel on this states something which was mentioned by delegate Oulahan and not responded to by the committee. It

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

makes unconstitutional preventive detention laws. This city has a policy of trying to identify that small number of repeat offenders who commit about 30 percent of the crimes. I'm terribly concerned about this question of preventive detention, where criminals can come in, after repeated conviction for violent crimes, and be let free to perpetrate that violence again upon the community.

MR. KAMENY: Delegate Marcus will respond, if it is in order.

PRESIDENT CASSELL: Committee?

MR. MARCUS: I'm afraid, delegate Long, that once again we've been led down a primrose path. In fact, if an individual can be demonstrated that he or she is likely to flee -- for example, they have three or four possible convictions in the past, and we have gone through an entire litany of people to discuss this particular issue -- there is no reason why it's necessarily unconstitutional to hold that person.

Bail is a right whose purpose it is to assure the accused's presence at trial. If one can be demonstrated to not appear at trial, we have been assured by several people that, in fact, the court can hold that particular person.

MR. LONG: That doesn't answer my question.

PRESIDENT CASSELL: Simmons, Garner, Eichhorn, and then after those three I want to determine that these are new questions that have not been debated before. Simmons?

MS. SIMMONS: Mr. President, to the committee, the unanswered question is whether or not protection of the community is implicit or a part of the purpose of bail, and I think that ought to be able to be answered yes or no.

If you tell me that, no, it is not and it is exclusively the right of the accused -- I need to know that. But I'm not comfortable with the knowledge base that I presently have.

MR. JACKSON: What we're saying, Ms. Simmons, is one thing. The purpose of bail is to hold the accused for a particular period of time. We understand that; it should not be excessive. What we are trying to stay away from is bail being used to hold someone based on the fact that they may commit another crime, and that is the problem.

What we are saying, Ms. Simmons, is that no one in any crime should be presumed guilty until, in fact, they have had a trial. If we use other forms, especially forms of preventive detention, we are punishing people, even those whom we may consider criminals, or some may consider them that, for past crimes and not imminent crimes.

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

What I'm saying is that we cannot use one thing to deal with another. If someone wants other things, then maybe they should vote for John Ray's bill or something. But that is not what we're dealing with here.

MR. KAMENY: Sort things out.

MR. JACKSON: Also, I might add that if we start using the concept of preventive detention, what will happen, Ms. Simmons, is that people -- all groups of people, all classes of people, all colors of people -- can be picked up and put in jail for some reason and never, my dear, be released. That is what we are trying to keep from, and that is what truly slips from the walls.

And I might add this, Ms. Simmons: No one is trying to put anything on anyone. We had extensive discussions. It is in the public record, it is written, and it is also stated here in the committee report.

MS. SIMMONS: Thank you.

PRESIDENT CASSELL: Mr. Thomas, would you care to address the question of the purpose of bail?

MR. THOMAS: Yes. The committee here is trying to protect --

PRESIDENT CASSELL: Please give the general counsel your attention.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

MR. THOMAS: -- is trying to protect a very basic concept, the original concept of bail being to assure the presence of the accused at trial. That concept has been abused over the years, in that bail would be set so excessively as to keep the person from getting out so that they could assure that they would be holding him for trial.

However, when you use the clause "bail is a right," it means that anyone is subject to bail, and if bail is set, it must be set only to assure his presence at trial, meaning if he can meet bail, he can get out.

The social concern over the last few years is that it leaves no room for people who are proven recidivists of violent crimes and that there is nothing to hold them. I think Marcus was talking before to state that if a person has a proven record of jumping bail, he can be held. But I don't think that was the question put to him.

I think the question that delegate Long presented to him was what happens in the case of a person who is a proven violent criminal or is maybe even a danger to himself? If bail is a right, what provision is there to hold him for anything other than bail?

PRESIDENT CASSELL: Delegate Garner, Delegate Eichhorn, delegate Freeman.

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

MR. GARNER: I rise in support of delegate Oulahan's motion. I want to make it clear that I support strongly the sentiments of the committee, and especially those sentiments expressed by delegate Jackson. The problem is that the language they have proposed does not achieve the objective they seek.

Those familiar with the criminal justice system know that judges are never called to bear on whether or not bail is excessive or not. Under the current system in every state, between 20 and 30 percent of the people arrested are detained prior to trial primarily through the setting of bail, primarily poor and black defendants. What you do here is make it so that we will continue with this practice.

Many left-wing, progressive groups, including the National Association of Pre-Trial Service Agencies, oppose these kinds of provisions and favor preventive detention. What preventive detention does is it requires that they prove prior to detaining that they've got a good case on the guy. Bail doesn't make that requirement.

The judge, in his own way, can say, "I believe this person won't show up for trial." That is good enough. Preventive detention means you've got to prove beyond a reasonable doubt that you've got evidence on the guy, and it's

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

a much stronger protection for defendants.

Secondly, the other groups that support this --

PRESIDENT CASSELL: Time.

MR. GARNER: -- are the feminists and the supporters of --

PRESIDENT CASSELL: Delegate Garner, we've going to have move on; I think you've made your point. Delegate Eichhorn, please limit this to one minute now. We've been on this for a long time.

MS. EICHHORN: I cannot support this language without some provision that some preventive detention would be permissible based on standards set by law. I do not like the idea of preventive detention, but I am more uncomfortable with the idea that in violent crimes like rape, victims are afraid to file charges or testify because they are threatened by repeated acts of violence by someone who is out on bail, or other persons who are threatened by the fact that that person may repeat the crime. That is a major concern to me.

I think we have to remember that many of the criminals who are incarcerated unfairly are black. Many of the victims -- in fact, most victims in this city are black. I think we have to look at both points of view. I'm not sure this addresses both points of view.

LER REPORTING CO., INC.
) Massachusetts Avenue, N.E.
ıshington, D.C. 20002
)2) 546-6666

PRESIDENT CASSELL: Delegate Freeman? I want one more response, then, from the committee and then we vote.

MS. FREEMAN: We're talking about apples and oranges. Bail exists for the purpose that the committee has described. It does not preclude the establishment of a preventive detention statute. We have one right now in D. C. Joel Garner is wrong, however. The standard for that is not "beyond a reasonable doubt." It's something which is roughly close to "clear and convincing."

If you can find, by generally clear and convincing evidence, although those aren't exactly the words they use, but that's the closest phraseology which we would understand -- dangerous; if the court finds that somebody is dangerous, then they can hold the person under the preventive detention statute. Bail deals with a whole separate issue.

This language would not preclude the legislature from enacting a preventive detention statute. I should also point out that the courts are not allowed to use dangerousness in setting bail; it is not permissible. Some judges do it, but you aren't supposed to do it.

MS. EICHHORN: Point of privilege.

PRESIDENT CASSELL: I really think we have to move on now. It's getting very late.

LER REPORTING CO., INC.
Massachusetts Avenue, N.E.
shington, D.C. 20002
2) 546-6666

MS. EICHHORN: Point of information.

PRESIDENT CASSELL: We have debated this at length. I want anything from the committee that has not yet been said.

MR. MARCUS: Yes.

PRESIDENT CASSELL: No reinforcement; just any new response for new issues.

MR. MARCUS: A new response. If the body will take a look at the last two clauses of the Eighth Amendment of the Constitution, you will realize that by voting for the Oulahan amendment, you're not just voting on the bail issue. Rather, you're voting on excessive fines. You're voting on cruel and unusual punishment inflicted, and there really is a question in regard to the use of the word "and," and there is a question in regard to the question of punishment.

PRESIDENT CASSELL: I think we've just about exhausted that because we are repeating.

MR. ROTHSCHILD: Point of information.

PRESIDENT CASSELL: We are at the point now where I will entertain a motion for the previous question.

MS. HARRIS: I move the previous question.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that the question be called.

R REPORTING CO., INC.
Massachusetts Avenue, N.E.
ington, D.C. 20002
546-6666

MR. ROTHSCHILD: Point of information. I would like to ask general counsel a question.

PRESIDENT CASSELL: Sir, I have said to you --

MR. ROTHSCHILD: Point of information.

PRESIDENT CASSELL: Please.

MR. ROTHSCHILD: I have a new point.

PRESIDENT CASSELL: I understand what you said. There are no new points. At some point --

MR. BALDWIN: The Chair does not recognize you.

MR. ROTHSCHILD: I request a point of information.

PRESIDENT CASSELL: Listen, sir, what I'm saying to you -- be quiet for a while and listen to what I say and stop yelling "point of information" because you're wasting time. I have indicated that we've put enough time on this. We've had an opportunity to ask a multitude of questions and get a multitude of answers.

I agree that I myself could ask questions for the next two hours, but I wouldn't waste our time that way. I deny you the opportunity to ask any more questions.

MR. ROTHSCHILD: I have a point of information. I would like to ask the general counsel --

PRESIDENT CASSELL: I said no. Isn't that what the Chair is for?

LER REPORTING CO., INC.
Massachusetts Avenue, N.E.
shington, D.C. 20002
2) 546-6666

MR. ROTHSCHILD: I would like to appeal. Something has been raised and I'd like to speak to the counsel.

PRESIDENT CASSELL: I won't even recognize you. The question has been called.

MR. ROTHSCHILD: Point of order. The question has not been called.

PRESIDENT CASSELL: Those in favor of voting on this issue, signify by saying aye.

(A chorus of "ayes.")

MR. ROTHSCHILD: Mr. President, the question has not been called.

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Let me see your hands. Those in favor of cutting off debate, please raise your hands.

MR. ROTHSCHILD: The question has not been called.

PRESIDENT CASSELL: Those in favor of terminating debate was the question that was called.

MR. ROTHSCHILD: The question was not called. You called it.

MR. COOPER: Twelve.

PRESIDENT CASSELL: Those opposed to cutting off debate, raise your hands, please.

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

MR. COOPER: Fourteen.

PRESIDENT CASSELL: Those abstaining?

MR. COOPER: One.

PRESIDENT CASSELL: All right. The motion loses. Now, let's have a general agreement that there shall be one more question, then we'll move on. Can we not?

MS. HARRIS: Yes.

PRESIDENT CASSELL: Can we now, by common consent?

MR. T. MOORE: Yes.

MS. HARRIS: Yes.

PRESIDENT CASSELL: Shall we let delegate Rothschild make that one more question and get a response, and then we vote?

MR. MARCUS: Yes.

MS. HARRIS: Yes.

PRESIDENT CASSELL: You have the floor, sir.

MR. ROTHSCHILD: Thank you. I would like to ask the general counsel to respond to the comments of delegate Freeman regarding the laws in preventive detention. If we adopted what the committee proposed, how would this affect preventive detention in such things as child abuse or wife beating, or things like that, where the judge felt that there should be some preventive detention?

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

MR. THOMAS: Delegate Freeman, I'm sure, can speak for herself. The way she reads Section 8 is that the issue of bail does not even address the issue of preventive detention; that they are two separate issues. This addresses bail, and preventive detention is preventive detention, all right?

Where I disagree is that the first clause, "Bail is a right" -- which means that if somebody is arrested, it's his constitutional right to have bail, and if bail is set, it can only be set to assure his presence at trial, nothing more.

MS. CORN: No matter what he has done.

MR. THOMAS: Right, right. That's where the disagreement is. We both interpret and read this section in different ways.

PRESIDENT CASSELL: Okay. Now, there was a general agreement that after this one question and answer, we would vote. It occurs to me that we have here an amendment by delegate Hilda Mason. Delegate Mason, do you still intend to make this?

MS. MASON: No.

PRESIDENT CASSELL: Very well. We've had our one question. There was a groundswell of approval that we take that one question and answer and then vote. May we now vote on the amendment?

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

MS. HARRIS: I move the previous question.

(The motion was duly seconded.)

MR. COOPER: We've already voted on it.

MS. HARRIS: We've already voted on the previous question.

PRESIDENT CASSELL: The Chair would entertain an amendment which appears to clarify the purposes of this section. Delegate Freeman?

MS. FREEMAN: It is Eichhorn's amendment, Mr. Cassell.

PRESIDENT CASSELL: Is it Eichhorn's?

MS. FREEMAN: Yes.

PRESIDENT CASSELL: Make your amendment, please. I'm only allowing this because it appears in the Chair's mind to clarify what we've been discussing for the past half hour.

MS. EICHHORN: I would like to amend the section by eliminating the first five words beginning the sentence, "The sole purpose of bail is to assure the presence of the accused at trial." I think that meets the intent of the committee and eliminates the dilemma regarding preventive detention.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that the wording indicated by delegate Eichhorn --

ER REPORTING CO., INC.
Massachusetts Avenue, N.E.
ington, D.C. 20002
) 546-6666

MR. COOPER: Point of order.

MR. KAMENY: We accept that.

PRESIDENT CASSELL: All right, accepted. May we, by common consent, accept that this is the wording of the committee?

MR. COOPER: Point of order.

PRESIDENT CASSELL: State your point.

MR. COOPER: Section 8 is not on the floor; the Oulahan amendment is.

MR. OULAHAN: Thank you.

MR. JACKSON: I call the question, Mr. Chairman.

PRESIDENT CASSELL: Okay. The Oulahan amendment is on the floor, and that is to delete and substitute.

MS. CORN: Point of information, please.

PRESIDENT CASSELL: I don't think I'm going to recognize any more; we've had enough points of information.

MR. BALDWIN: That's right.

PRESIDENT CASSELL: Everybody understands now that the motion on the floor -- attention to the Chair, please. The motion on the floor is to delete Section 8 and substitute for it the wording indicated by delegate Oulahan, and that is what I shall read. "Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishment

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
202) 546-6666

inflicted."

Those favoring delegate Oulahan's amendment, indicate by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Let me see the hands of those who support the Oulahan amendment.

MR. COOPER: Nine.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Twenty-two.

PRESIDENT CASSELL: Abstain?

MR. COOPER: Three.

PRESIDENT CASSELL: The motion loses. The motion on the floor is Section 8, "Bail," as indicated in the article submitted by the committee. Those in favor of Section 8 as written --

MR. KAMENY: The Eichhorn-Freeman amendment?

MR. BALDWIN: You just adopted it. If you say you adopt it, then you present it out. We don't have to go through all of that motion; that then becomes part of your

motion.

MR. COOPER: It has got to be put on the floor.

PRESIDENT CASSELL: Do I sense that there are people who want to discuss this?

MS. MASON: I have an amendment.

MS. HARRIS: What is it?

PRESIDENT CASSELL: You said you didn't want your amendment.

MS. MASON: I didn't, but his --

PRESIDENT CASSELL: All right. Delegate Mason has an amendment. Would you state your amendment?

MS. MASON: Insert the following amendment: "Bail may be denied to persons charged with offenses punishable by life imprisonment."

(The motion was duly seconded.)

MR. B. MOORE: Repeat, please.

PRESIDENT CASSELL: Delegate Mason's motion is to retain lines 3, 4 and 5 and to add at the end of "guarantee" these words: "Bail may be denied to persons charged with offenses punishable by life imprisonment." It has been moved and seconded. Discussion?

MR. LONG: Point of order.

PRESIDENT CASSELL: Point of order. State your point.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

MR. LONG: I believe we have an amendment on the floor. A second amendment can only be made to change something in the amendment on the floor.

PRESIDENT CASSELL: There really is not an amendment on the floor, delegate Long.

MR. MASON: The committee accepted it.

PRESIDENT CASSELL: Discussion on delegate Mason's motion? Discussion?

MS. MASON: Mr. President?

PRESIDENT CASSELL: You may speak to your motion.

MS. MASON: I don't want to appear to be hard, but I have had personal experience where a very serious crime was committed and the persons were out on the street a few days after the crime because they were able to get out with a small amount of money for bail. I want to make sure that that does not happen.

PRESIDENT CASSELL: The committee will respond.

MR. JACKSON: Yes, sir. Just briefly, the committee would have to strongly be against that. I have never committed a criminal offense in my life. If I walk out the door and the cops say I committed murder, you are saying that they shall be able to hold me without bail. I think that is fair logic; that is what it says. For that reason, we are against that.

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

What you do, then, is punish someone before they have been convicted of anything, and that is against the grain of what we say. It should be against the idea of the freedom of this country. We cannot accept that.

PRESIDENT CASSELL: Corn?

MS. CORN: I would speak for this motion. The presumption here is, since it says bail may be denied and it doesn't say bail shall be denied -- it means that when bail is denied, it shall be denied for just cause. That is implicit in that statement, the idea being if you walked out this door, sir, and you were charged with murder in the first degree, chances are you would indeed receive bail under the Mason amendment because you had never before been accused of a crime.

However, if you had been accused of crimes before and had been tried and found guilty and served time, and now you are accused again, chances are you would, in fact, be denied bail under the Mason amendment. I support --

PRESIDENT CASSELL: Thank you. Delegate Simmons?

MS. SIMMONS: I have very deep appreciation for delegate Mason's concern and her personal experience and what she has proposed as an amendment. However, I don't believe that it really does what she wants done. The abuse of this could mean precisely what delegate Jackson said, and the fact

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

that he is charged with the offense of murder.

Now, the real reason may be because of his personal ideologies that he holds, but one can say that he is charged with murder. I think we've got lots of political prisoners in this country now incarcerated, and it isn't for crimes that have been proven.

I believe that what we hope to achieve with delegate Mason's amendment can, in fact, be achieved by the Jan Eichhorn amendment, and the only difference is one makes it permissible, where the other doesn't. Jan says the purpose of bail is to assure the presence of the accused at trial, and this other one says that bail may be denied to persons charged with offenses punishable by life imprisonment. I'm just really worried about that because you could charge anybody with anything. It's done all the time and it gets stimulated in places other than criminal justice; it gets stimulated elsewhere.

PRESIDENT CASSELL: Hear ye, hear ye, hear ye. We have had Mason for, Corn for, Jackson against, Simmons against. We really don't need to debate this any more; we need to vote, don't we? May we vote?

MS. HARRIS: I move the previous question.

PRESIDENT CASSELL: Those in favor of the Mason

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
(202) 546-6666

amendment, please --

MR. B. MOORE: Discussion.

MS. HARRIS: You've had discussion.

PRESIDENT CASSELL: I'm saying "please." You really aren't going to make that much of a contribution.

Signify by saying yes.

(A chorus of "yeses.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstaining?

(No response.)

PRESIDENT CASSELL: The motion loses. We're back to Section 8. Delegate Mason?

MR. MASON: I move Section 8, which includes the Eichhorn amendment which the committee accepted.

PRESIDENT CASSELL: All right. Section 8 is moved, including the Eichhorn amendment. Those in favor, please indicate by saying aye.

MR. COOPER: Mr. President, point of order.

MR. OULAHAN: What is the Eichhorn amendment?

PRESIDENT CASSELL: State your point.

MR. COOPER: When Ms. Eichhorn first moved her amendment, it was brought up that it was out of order and you

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

ruled it so. In order for this section to be amended, I would hope that she would put her amendment back on the floor --

MR. JACKSON: Point of order.

MR. COOPER: -- so that we have it for the record.

PRESIDENT CASSELL: Mr. Cooper, in order to save time and expedite time, the committee indicated that they accepted it; it is now a part of that. That is what we're voting on. Those in favor of --

MR. COOPER: Mr. President, Mr. President.

PRESIDENT CASSELL: Would you please stop yelling in my ear? I want to move on.

MR. COOPER: I'm not yelling.

PRESIDENT CASSELL: I don't think you're contributing anything.

MR. COOPER: I am contributing something. What I'm saying is --

PRESIDENT CASSELL: Are you making a technicality that is not going to change this vote, Mr. Secretary?

MR. COOPER: What I'm saying is the Eichhorn amendment was not moved for the record; it is not on the record. That's all I am saying.

PRESIDENT CASSELL: Thank you, thank you. Now, I heard that. You don't have to tell me that any more.

MR. GARNER: Point of order. I believe there are additional amendments to this section that I think are important for us to consider.

PRESIDENT CASSELL: Though I know you think that, I think we could do that until 12:00. We've got to stop some time. I've pointed out that it's time to vote.

MR. GARNER: Can we have a vote on whether we're going to call the question, Mr. Chair?

PRESIDENT CASSELL: No. The previous question has been called. I'm going to call for a vote on that, all right? Those in favor of terminating debate, indicate by saying aye, please.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Let me see the hands of those who want to terminate debate.

MR. COOPER: Eleven.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Twenty-one.

PRESIDENT CASSELL: Those abstaining?

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

MR. COOPER: One.

PRESIDENT CASSELL: Okay. Now, we are at the point now where we still haven't settled on Section 8. I'm going to waste a little more time; I'm in a position to do that, too. We have to finish Rights by tomorrow. Did everybody get a copy of that schedule that we are asked to comply with?

Does everybody understand that if we don't comply with that schedule and meet that time frame, we shall not finish on May 29th? Is there any debate about that?

(No response.)

PRESIDENT CASSELL: In other words, we have to finish Rights tomorrow. Tomorrow is Tuesday, right? We're not halfway through it yet. Then on Wednesday, all day long Wednesday, we have to complete all of the second readings? Is that right, madam chairperson of the Style and Drafting Committee?

MS. GRAHAM: Yes, Mr. President. May I ask that we get here tomorrow morning at 9:30 so we can begin working on this editing as soon as possible, and anybody else who is interested?

PRESIDENT CASSELL: All right. You can see the great sacrifices and dedication evidenced by the Style and Drafting Committee.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

MR. KAMENY: Note that there will be no session on Thursday. Wednesday ends it, because Style and Drafting has to act Thursday.

PRESIDENT CASSELL: Let the Chair indicate that and make it official now. Here's where we are: We must finish this article tomorrow; that's Tuesday. Wednesday, we're here all day long; we come in at 10:00 and we stay until we finish all of the second readings. Then on Thursday, we'll recess; we won't even be here on Thursday. We have to recess in order to allow Style and Drafting to do the work, the voluminous work, regarding the editing of what we have done up to this point so that it can be brought back to us on Friday, and we can have, if necessary, third readings. I would hope third readings shall not be necessary.

Saturday morning, we do some cleaning up, and we have to print that document; we have to print, Saturday morning, the document that we finish on Friday, and then vote on it. Now, I'm saying to you, and I'm admonishing everybody who voted to extend debate there -- I'm saying to you that the President is angry.

Let me say this: We're supposed to be out of here at 11:00, right?

MS. HARRIS: Right.

HILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 546-6666

PRESIDENT CASSELL: When I extend the convention time tonight until such time as we have reached at least two-thirds of this article in order that we can get on and finish it tomorrow, that means we go way past 11:00 and we go past 12:00, which means we have to walk down those nine flights.

I'll say one more time to you that the President is angry at the behavior of this group. Now, I'm going to continue to cut off debate and you're going to spend a lot of time tonight overruling the Chair; I promise you that. I want to get through this section tonight.

Now, we're back to extended debate. Delegate Clark?

MR. CLARK: Mr. Chairman, I move an amendment to add to the end of Section 8 -- and I reserve the floor, for I have two amendments -- these words: "Non-financial conditions of bail may be set to assure the presence of the accused at trial and the safety of the community."

(The motion was duly seconded.)

MR. CLARK: I'll repeat it. "Non-financial conditions of bail may be set to assure the presence of the accused at trial and the safety of the community." I heard a second. In support thereof --

PRESIDENT CASSELL: I didn't hear a second.

MR. OULAHAN: I seconded it.

LLER REPORTING CO., INC.
) Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

PRESIDENT CASSELL: Be quiet. Is there a second to that motion?

(The motion was duly seconded.)

PRESIDENT CASSELL: Let me put it on the floor. It has been moved and seconded that the amendment made by delegate Clark should be considered.

MR. CLARK: Thank you, sir.

PRESIDENT CASSELL: One moment. The secretary has asked that you submit it so that he can read it and read it back.

MS. FREEMAN: Point of order.

MR. CLARK: That's why I asked for the secretary's attention, Mr. Chairman.

PRESIDENT CASSELL: If you would show up and show up on time regularly, you would know that the rules require that you must write it out and submit it to the Chair. That means that you can also be polite and courteous to both the President and the secretary and not make snide remarks.

All you have to do now is write it out, as everybody else has been doing, and give it to the secretary.

MS. FREEMAN: I have a point of order.

PRESIDENT CASSELL: Point of order?

MS. FREEMAN: Mr. President, I had an amendment on

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

the floor earlier, the Eichhorn-Freeman amendment.

MR. KAMENY: That was adopted.

PRESIDENT CASSELL: That was adopted. The committee accepted it.

MR. MASON: That was adopted.

MR. COOPER: And then it never came up again.

PRESIDENT CASSELL: Thank you, thank you. I'm glad you told me that.

MR. COOPER: So it's not on the record.

PRESIDENT CASSELL: I can't forget it now; I can't forget it. You've told me three times.

MR. COOPER: It's not on the record.

PRESIDENT CASSELL: Well, it's in my head and everybody else's head.

MR. BALDWIN: Mr. President?

PRESIDENT CASSELL: Yes, sir?

MR. BALDWIN: While delegate Clark is writing his amendment --

MR. CLARK: I've got it.

MR. BALDWIN: I would suggest that the committee -- and the committee has accepted delegate Eichhorn's change as a friendly amendment -- would state it so that everyone would know what the main motion is now with those changes. State

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

that and make that a matter of record, and then we'll be in a position to accept delegate Clark's amendment.

PRESIDENT CASSELL: A point well taken. Delegate Kameny, would you respond?

MR. BALDWIN: Just state your new language now for your main motion, which would include those changes.

PRESIDENT CASSELL: Including Eichhorn's and Freeman's.

MR. BALDWIN: Right.

MR. KAMENY: The motion we have now, not counting the motion on the floor now from delegate Clark -- or do you want that?

PRESIDENT CASSELL: No.

MR. KAMENY: All right. The present language, as accepted, is, "The sole purpose of bail is to assure the presence of the accused at trial. Bail shall not be excessive and may take the form of a cash or property guarantee."

PRESIDENT CASSELL: Now, does everybody understand that? That is the accepted motion which the committee now has before you and which is about to have an amendment offered to it.

Delegate Clark?

MR. CLARK: Mr. Chairman, I have presented it in

MILLER REPORTING CO., INC.
320 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 546-6666

writing per your request, sir. Do you wish to have it read?

PRESIDENT CASSELL: I want you to read it first.

MR. CLARK: I just brought it up there.

PRESIDENT CASSELL: Well, look, if you're going to make a motion, what you do -- let me explain this procedure. You're a lawyer and I should think you could easily retain these things. You stand up, you make your motion, you read it, and you send it to the secretary. The procedure is to read it; the secretary is to have it. Please proceed.

MR. CLARK: Mr. Chairman, my motion, as I recall, is, "Non-financial conditions of bond may be set to insure the presence of the accused at trial and to assure the safety of the community."

PRESIDENT CASSELL: Is there a second to that motion?

(The motion was duly seconded.)

PRESIDENT CASSELL: Okay. Discussion?

MR. CLARK: Mr. Chairman?

PRESIDENT CASSELL: Would you like to speak to your motion?

MR. CLARK: The purpose of my motion is to continue in force and to clarify in the new constitution a provision of existing law that such things as third-party custody, reporting to a bail agency on a periodic basis, staying away

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

from the complaining witness, residing at a certain place, abstaining from the use of abusive substances, et cetera, may be set by the court, not only for the purpose of assuring the presence of the accused at trial, but also to assure the safety of the community. Our current law allows that.

The safety of the community is something the courts ought to take in consideration in setting non-financial conditions of bond, and I would argue that our constitution ought to at least allow for that.

On a matter of personal privilege while I have the floor, I know that my attendance has not been the best, Mr. Chairman. I bring the resources that I bring, and when I have them to offer, I will offer them. Thank you.

PRESIDENT CASSELL: We have only tried to make sure that you follow the same procedures that all other delegates find no difficulty following.

Delegate Freeman?

MS. FREEMAN: I oppose the amendment proposed by delegate Clark. I think that it is violative of the fundamental principle that we operate under in this country and that we have debated extensively tonight, and that is that it presumes the guilt of somebody before that person has been proven to be guilty, and I'm not sure what the standard is for that.

LLER REPORTING CO., INC.
) Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

We have accepted the Eichhorn-Freeman amendment where it says that the sole purpose of bail is to assure the presence of the accused at trial. It's perfectly clear that we can enact a preventive detention statute which would spell out what the conditions would be for determining whether a person is dangerous, but the standard would have to be to prove that person is dangerous to hold that person in jail, pre-trial.

But this is vague, and I think it really is grossly unfair and violative of the basic rights of people.

PRESIDENT CASSELL: Dr. Kameny?

MR. KAMENY: I rise in opposition to delegate Clark's motion. He has raised exactly the things that I personally was trying to avoid in the original drafting within the committee. To require a person not convicted to reside at a particular place -- I have the right as a non-accused to reside where I want, and he does. The only purpose of bail is to insure that he gets there at trial.

To require him not to partake of abusive substances so he can't go in a bar and have a drink -- he has not been convicted, he is not under probation, he is not under parole. He is innocent because he has not been proven guilty. He has every right that you and I have. Bail is not there to control

MILLER REPORTING CO., INC.
1220 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 546-6666

him because he has been accused. The control of him occurs only after he has been convicted, and he is a long way from conviction at that point.

That is exactly what this whole debate is about, and exactly what this committee has been trying to avoid the imposition of, to use a bad sentence. I urge you to vote this amendment down.

PRESIDENT CASSELL: Garner?

MR. JACKSON: Sir, just briefly. It seems to me if we want to deal with crime, we deal with it in an appropriate way. Mr. Clark is a slick Philadelphia lawyer; he should know that. We deal with that in a particular way.

Now, I might say this. Nothing is more precious than my life. Why are you trying to set standards on it? If you can't put a monetary standard on it, then you come back with something else to set on it, and what is the purpose of that?

We are dealing here with the section guaranteeing individual rights of people, and people like me whose rights have been denied all these years. Now, why in the devil is it necessary, if you can't find a monetary term to put on it, to find something else to put on it? It is just a slick way of doing the same thing. It denies, most importantly, the

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

rights of those who have not been convicted of something and to stay in jail for something they have not been convicted for.

You have set another term for it, which may be not my cost, by my grandmother's. But you must also remember this: "Excessive" can also mean my life. It does not have to mean money, but maybe we are so used to dealing with money that that's all we can think about. My life is what is at stake, brother.

PRESIDENT CASSELL: Garner?

MR. GARNER: Again, I believe the question is not the objective sought, but the language used and the instruments to achieve those objectives. I believe you should adopt the Clark amendment.

What happens if you do not have non-financial provisions is that judges will use financial provisions, and you will discriminate against those people who cannot meet, or bail bondsmen will not provide, financial provisions. What this provision does is give to the judges the opportunity not to incarcerate or to set bail, but to allow people to be free in the community under certain conditions. It puts more people out of jail, pre-trial, if you adopt this language.

It's a provision that helps poor people, and it helps the taxpayers because they do not have to pay for them

LLER REPORTING CO., INC.
) Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

being in jail prior to trial. So I urge you to support it.

PRESIDENT CASSELL: Eichhorn?

MS. EICHHORN: Yes. I'm not certain that I understand all the ramifications of this amendment, but it does speak to some of the concerns I addressed earlier. For example, if a couple who has separated is involved in a situation where one threatens another, without incarceration you could conceivably have a judge who would order that the husband or the wife may not be on the premises of the other party, or if that occurs, bail would be foreclosed.

If that is the purpose of this kind of provision, that eliminates the need of preventive detention in situations where the person's rights are not severely violated. You could have someone accused of a violent crime who has not been proven guilty simply not permitted to be in the area of the victim, who may feel very threatened to have that person released, until it goes to court and that person is determined innocent or guilty.

Now, I don't understand how this is abusive of an individuals rights in those kinds of circumstances..

PRESIDENT CASSELL: You're speaking for the amendment?

MS. EICHHORN: Well, I'd like to have that addressed by opponents of the amendment. How is it abusive?

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

PRESIDENT CASSELL: General counsel?

MR. THOMAS: I don't think that the language as written prevents anything that delegate Clark wants to do by this amendment. It's common knowledge that OR status, meaning "on your own recognizance" -- a judge can let people out of jail after the alleged commission of a crime without bail at all. It's called "on your own recognizance." He determines that your ties to the community are so great that he doesn't have to apply bail.

Now, as a part of that OR status, he can impose any kind of conditions he wants, such as "don't see the person you allegedly attacked," or "don't do this or that." I don't see anything in this language that would prevent that.

MR. ROTHSCHILD: In which one, the committee's?

MR. THOMAS: I don't see anything in the committee's language that would prevent laws from being enacted or present policies to keep being followed, which would incorporate delegate Clark's wishes. I don't see where that amendment would have to be added to the constitution to guarantee it, because bail is something that doesn't have to be applied at all. The judge may require no bail and set conditions upon which that would be honored.

PRESIDENT CASSELL: Delegate Mason, delegate Croft.

MS. MASON: I pass.

PRESIDENT CASSELL: Croft?

MR. CROFT: I guess my sentiment is with the general counsel. Delegate Clark's amendment doesn't add anything. But I'd like to go to an assumption behind most of what he has said and what others have said tonight.

We seem to be assuming that we have difficulty locking up people in this city. We don't have difficulty locking up people in this city. In fact, there's only one other place on the face of the earth that has a higher percentage of its population in jail besides D. C., and that is the Union of South Africa.

So, it would seem to me that, currently, we have no problem locking up people; we have no problem keeping them in jail. That's the point I want to make. In other words, there is an erroneous assumption. The erroneous assumption is that somehow people are constantly on the streets and they are not behind bars. Well, that is not, in fact, true.

Let me make a point. I have worked at Lorton for four years, and let me make a point about working at Lorton for four years. I have only on one occasion seen --

MR. CLARK: Point of order, Mr. Chairman.

MR. CROFT: No, no, no.

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

MR. CLARK: I'm not speaking of incarceration. The motion does not call for incarceration.

MR. CROFT: What I'm talking about, Mr. Clark, is the assumption behind the amendment offered. The assumption behind the amendment offered is indeed that it is difficult to keep people behind bars; it's difficult to hold people once they have been arrested and charged.

MR. CLARK: I'm not arguing for incarceration.

MR. CROFT: That's fine. I just want to make the point again that we have no difficulty putting people in jail.

PRESIDENT CASSELL: Ladies and gentlemen, let me see how many people have spoken on this -- nine. Can we say now that we have exhausted this?

MR. BALDWIN: I think so.

PRESIDENT CASSELL: I'll entertain a motion for the previous question.

MR. BALDWIN: So move.

PRESIDENT CASSELL: Is there a second to that?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that debate be terminated. Those in favor, signify by saying aye.

(A chorus of "ayes.")

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
'ashington, D.C. 20002
02) 546-6666

PRESIDENT CASSELL: Those opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: All right. Mr. Secretary, would you read the motion that is on the floor, the Clark amendment?

MR. COOPER: "Non-financial conditions of bond may be set to assure the presence of the accused at trial and to assure the safety of the community."

PRESIDENT CASSELL: All right. Those in favor of the Clark amendment, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The motion loses.

MR. SCHRAG: Mr. President?

PRESIDENT CASSELL: Delegate Schrag?

MR. SCHRAG: I have a question for the committee.

PRESIDENT CASSELL: Yes?

MR. SCHRAG: Would the committee please tell me whether they agree with delegate Freeman's statement that, as

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

amended, this section does not bar a pre-trial detention statute from being passed? Do you agree with delegate Freeman?

MR. KAMENY: Yes, I would agree.

MR. SCHRAG: Would you please state it for the record?

MR. KAMENY: As now amended, yes.

MR. MASON: As now amended, we agree that what delegate Freeman said is correct.

MR. SCHRAG: Thank you.

PRESIDENT CASSELL: Those in favor of Section 8, as amended, indicate by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(There were two "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The motion carries. Section 8 is adopted. Delegate Mason?

MR. MASON: I move Section 9, "Trial by Jury."

(The motion was duly seconded.)

PRESIDENT CASSELL: Section 9 has been moved and seconded. Discussion? Corn?

MS. CORN: I have one perfecting amendment; it's

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

just for perfection. At the end of line 11, add the words "at least 18 years old who are state residents." I think that's clearly understood, but it should be there in the constitution.

PRESIDENT CASSELL: Read that once more.

MS. CORN: At the end of line 11, after the word "twelve," put a comma and add "at least 18 years old and who are state residents." I think that's clearly understood, but should be in the constitution for clarity.

PRESIDENT CASSELL: Do you have that, Mr. Secretary?

MR. COOPER: Yes.

PRESIDENT CASSELL: Is there a second to the motion?

(No response.)

PRESIDENT CASSELL: Is there a second to that motion?

(No response.)

PRESIDENT CASSELL: The motion dies for the lack of a second.

Section 8 is now on the floor again.

MR. KAMENY: Nine.

MR. LOVE: Nine.

PRESIDENT CASSELL: I beg your pardon. I apologize profusely to everybody. I don't want to go through that again. Delegate Robinson?

MILLER REPORTING CO., INC.
320 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 546-6666

MR. ROBINSON: I move the previous question.

(The motion was duly seconded.)

PRESIDENT CASSELL: Those in favor of terminating debate, indicate by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(There was one "nay.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The motion on the floor is to adopt Section 9. Those in favor, indicate by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(There was one "nay.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Section 9 is adopted. Delegate Mason?

MR. MASON: I move Section 10, "Punishment."

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that Section 10 be adopted as read. Discussion? Rothschild?

MR. ROTHSCHILD: I have a minority report.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

PRESIDENT CASSELL: A minority report?

MR. ROTHSCHILD: Yes. Basically, what I'm doing is, in the section on punishment, I'm asking to amend it by removing the sentence, "Convicted persons shall not be denied any rights specified in this Constitution except only as shall be reasonably necessary for the security of a penal institution." I'm asking that that be dropped.

PRESIDENT CASSELL: On line 20?

MR. ROTHSCHILD: Yes.

(The motion was duly seconded.)

MR. KAMENY: Why?

MR. ROTHSCHILD: The reason --

PRESIDENT CASSELL: Hold on now. It has been moved and seconded that, one line 20, the sentence beginning, "Convicted persons shall not be denied any rights specified in this Constitution except only as shall be reasonably for the security of a penal institution," be deleted. Speak to your motion.

MR. ROTHSCHILD: The reason I'm asking that that be done is not because I'm anti-convicts, but because I believe that being in a penal institution is a separate thing. I mean, somebody who is in a penal institution is having a hard time dealing with society. One of the reasons for being in a

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

penal institution is for some amount of control of the behavior of that person. I truly believe that positive reinforcement is the way to go, and we have in here, "Penal administration shall be based on the principle of reformation, and with the objective of restoring the offender to a useful role in community life." So, we have a statement in there as to positive reinforcement.

Nevertheless, negative reinforcement is a part of life. People are in there because they are having a hard time participating in the community. I think to require somebody to work and be part of a situation where their labor is required in something -- it is costing the state money to keep people in there, so I think it's not unfair to ask somebody who has, in a sense, taken something from society to at least carry their own load in an institution. Thank you.

PRESIDENT CASSELL: Delegates Barnes, Long.

MR. BARNES: I would like to ask the legal counsel a few questions. First of all, what does the removal of the sentence actually do from a legal standpoint? Two, does the sentence that is being removed, if left in, affect what we said about prisoners not having the right to vote?

MR. THOMAS: Well, I guess answering the last part first, the right to vote is already specified in another

article of the constitution as to who has the right to vote.

The last sentence, "Convicted persons shall not be denied any rights specified in this Constitution except only as shall be reasonably for the security of a penal institution," is a modern concept. It pretty much states that the only difference in a prisoner should be the fact that he's in a penal administration, and the only way he should be restricted is to preserve the security of the penal administration.

The article has adopted reformation as the objective, rather than retribution or deterrence. I guess that is opposed to deterrence or retribution, and so the last sentence is consistent with the concept that they wish to promote in punishment of offenders. If someone is arrested and put in jail, the concept is to reform, period, rather than any other formula.

So, if Mr. Rothschild's amendment to delete it is adopted, it will simply keep everything the way it is now. Prisoners don't have all of the rights that other people have, and they are not recognized as being entitled to have all the rights.

PRESIDENT CASSELL: Delegate Long?

MR. LONG: I'm concerned over the question of the

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

right to vote. If somebody is convicted of a crime and incarcerated and has opted out of society, the right to vote is a very important right and I don't think it should be extended to those until, as our suffrage article allows, they are no longer incarcerated. During that period, I think that right should be withdrawn.

So, if this amendment to strike this is defeated, I will offer an amendment to that effect.

PRESIDENT CASSELL: You are speaking for the motion to strike?

MR. LONG: Yes.

MR. THOMAS: Mr. President, I'd just like to state that it's already defined. I brought it up at the time that you were letting people incarcerated in local jails vote, giving them the right to not only vote, but circulate petitions and sign petitions.

People other than prisoners who have been convicted of a felony can vote in D. C., according to the constitution.

MR. LONG: While incarcerated?

MR. THOMAS: Right, right, and circulate petitions and sign petitions.

PRESIDENT CASSELL: Delegate Coates, and then a response from the committee.

IILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
(202) 546-6666

MR. COATES: Thank you, Mr. President. As a technical matter in line 22, or is it not, the wording in the report of the committee reads, "except only as shall be reasonably necessary for the security of a penal institution?"

MR. KAMENY: Yes.

MR. COATES: In the text of the article, "necessary" is missing, and I don't know what the technical correction is and the intent of the committee.

MR. KAMENY: "Reasonably necessary." I thank you for calling it to our attention.

PRESIDENT CASSELL: Okay. Delegate Kameny?

MR. KAMENY: Delegate Marcus will respond.

MR. MARCUS: I'd like to point out that this body has already denied the right to vote to those people who are convicted of a felony. That is not obviated by this particular sentence.

What is currently the state of the art in the District of Columbia in terms of prisoners is that those people who are incarcerated prior to a conviction for a felony or who are incarcerated for a misdemeanor can, in fact, vote. They can, in fact, circulate petitions to the extent that it does not threaten the security of the institution.

What are we talking about when we're talking about

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

preserving the rights of prisoners which are not in violation of those rules or those denials of rights which are reasonably necessary for the security of the institution? Well, we're talking about the right to religious freedom, for example, which can, in fact, under this particular sentence, be tempered.

We are talking about the right of expression, which can, in fact, under this provision, be tempered. We are talking about due process, which can, to some degree, be tempered under this particular language.

We are simply saying let us be consistent in how we approach that way that we deal with those people who are being incarcerated by society. I think it's a very important principle to support, and it threatens nothing. I want to be clear about that; it does not threaten anything. Thank you.

PRESIDENT CASSELL: Harris?

MS. HARRIS: Yes. I'd like to urge the delegates to not support the Rothschild amendment. There are many, many instances in which persons are convicted, and convicted wrongly. And I urge you to defeat this, and I'm doing so because, number one, I was convicted during a sit-in. Now, does that mean that I cannot vote? I think those instances do appear in various forms, and I don't think that we should

LER REPORTING CO., INC.
Massachusetts Avenue, N.E.
shington, D.C. 20002
2) 546-6666

approve this because, number one, you could be convicted for many, many reasons, and it does not have to be murder.

I think that we should allow convicted persons to vote.

PRESIDENT CASSELL: Delegate Robinson?

MR. ROBINSON: I move the previous question.

(The motion was duly seconded.)

PRESIDENT CASSELL: The previous question has been moved. Those in favor of terminating debate, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(There were two "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The motion on the floor is to delete the words beginning with "Convicted" on line 20 of Section 10 on punishment. Those in favor of the Rothschild motion, indicate by saying aye.

(There were three "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

LLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

(No response.)

PRESIDENT CASSELL: The motion loses. Further amendments? Delegate Clark?

MR. CLARK: Mr. Chairman, on line 22, I would move to strike the words "of a penal institution," and insert the words "the state and its citizens." The line would then read, "except only as shall be reasonably necessary for the security of the state and its citizens."

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that on iine 22 the words "a penal institution" be struck, and replaced with "the state and its citizens."

MR. CLARK: Mr. Chairman, for instance, people who are on parole or probation are not within a penal institution, and therefore cannot be threatening to the penal institution. However, certain controls might need to be placed upon such persons.

Indeed, if we're to argue for greater community release and we provide that there can not be the controls, we have provided an effective deterrent against putting somebody on parole. But if we can put conditions upon their release and supervise them during their release in order to provide for the protection of the state and its citizens, we will be

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

in a better situation.

MR. BALDWIN: Mr. Chairman, I would like to ask Mr. Clark a question through the Chair. I know he gave some examples, but we don't seem to be fitting that properly. What would be some examples of rights in our constitution that you would deny for the sake of the state and its citizens? Can you think of any rights, where a person is on parole or probation?

MR. CLARK: Freedom of association. When Mr. Hoffa was paroled, he was told not to participate in Teamsters Union activities because that was the place where his crime had originated from. Part of his parole conditioned his rights of association. That's an example.

MR. BALDWIN: Does our constitution speak to the freedom of association?

MR. CLARK: Yes, it does.

MR. KAMENY: Yes, it does.

MR. BALDWIN: Okay, I'm just asking a question. What section is that in?

MR. COOPER: Two.

MR. BALDWIN: He can answer.

MR. CLARK: Section 2.

MR. BALDWIN: So, that's probably the only example

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

you can think of, the freedom of association?

MR. CLARK: No, sir. I can think of other examples. Freedom of movement -- the freedom to move back and forth between the various states -- might be conditioned by a parole requirement that a releasee could not travel beyond 250 miles of the jurisdiction.

MR. BALDWIN: Thank you.

PRESIDENT CASSELL: Rothschild?

MR. ROTHSCHILD: Yes. I would like to further amend Mr. Clark's statement. My basic concern is not for religious rights and the rights of speech, and so forth. My basic concern is that somebody is in prison and there's no way of getting him to work or do anything. He's basically just sitting around in non-cooperation, and I don't think that's appropriate in prison.

So, basically, I would like to amend Mr. Clark's statement by saying, "and maintenance of the penal institution," providing for the possibility that prisoners could be required to help in the maintenance of the penal institution, which is costing about 25, $27,000 a year anyway.

MS. CORN: Per person.

MR. ROTHSCHILD: Per person.

PRESIDENT CASSELL: Could you please state your

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202) 546-6666

amendment? This is a secondary amendment now.

MR. ROTHSCHILD: The secondary amendment is to amend Mr. Clark's amendment by saying "and maintenance of the penal institution."

PRESIDENT CASSELL: "And maintenance of the penal institution?"

MR. ROTHSCHILD: Yes.

MR. BALDWIN: Point of order, Mr. Chairman.

PRESIDENT CASSELL: Yes?

MR. BALDWIN: Does the maker of that motion intend, then, to drop his motion? You have an amendment to strike.

MR. KAMENY: That was defeated.

MR. BALDWIN: That was defeated.

PRESIDENT CASSELL: Is there a second to that motion?

MR. OULAHAN: Yes.

PRESIDENT CASSELL: Okay. It has been moved and seconded that additional words be added at the end of "the state and its citizens."

MR. MARCUS: Mr. Chair, point of order. Mr. Rothschild's amendment at this point is substantively the same as striking the last sentence here. What he is doing, in fact, is essentially forcing the loss of the right to the ban against involuntary servitude and slavery on prisoners. What Mr.

Rothschild is trying to do is circumvent the will of this particular convention by adding to the language here. I would suggest that his motion is substantively out of order.

MR. ROTHSCHILD: Point of order. My motion --

PRESIDENT CASSELL: Hold on. You must wait until I have recognized you. Do you want to respond to his challenge? He is stating you're out of order, and you don't have to have a point of order. I'm asking you to respond to it.

MR. ROTHSCHILD: My original motion may have encompassed too many rights. In other words, people saw the right of speech, the right of religion, and all the other things. My basic concern is that people in prison should be required to help maintain the prison.

So, what I am doing now by this amendment is I am narrowing the loss of rights and I am focusing more on exactly what that concern of mine was, that they be asked to participate in maintaining the penal institution.

PRESIDENT CASSELL: Let me hear one more. Delegate Thomas?

MR. THOMAS: Mr. Chairman, I would rise on a point of personal privilege. I don't understand the wording on line 20, "Convicted persons shall not" --

PRESIDENT CASSELL: Let's speak to the amended motion

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

that's on the floor now.

MR. THOMAS: At the appropriate time, I would like to speak to what I'm worried about.

PRESIDENT CASSELL: Okay. Is delegate Rothschild's secondary amended motion clear to everybody?

MR. KAMENY: No. I'm confused as to the whole state of the amendments on the floor at the moment. Could we please have a brief clarification? Thank you.

PRESIDENT CASSELL: Okay. The first amendment by delegate Clark is, one line 22, to strike "a penal institution" and to substitute "the state and its citizens." The secondary amended motion by delegate Rothschild is -- Mr. Secretary, do you have Rothschild's secondary amendment?

MR. COOPER: Yes. The Rothschild amendment would add to the end of the sentence, or the end of the Clark amendment which now is the sentence --

MR. COATES: I cannot hear the secretary, Mr. President.

MR. COOPER: The Rothschild amendment would add to the end of the Clark amendment at the end of the sentence, "and maintenance of the penal institution."

MR. B. MOORE: Could you repeat the entire sentence? He said the same thing that Rothschild said.

MR. COOPER: Well, he asked for the amendment.

PRESIDENT CASSELL: Okay. Once more, Mr. Secretary, would you start with line 20 and read it now as it is amended the second time by delegate Rothschild?

MR. MARCUS: Have you accepted that amendment, Mr. Chair?

MR. COOPER: It was moved and seconded.

"Convicted persons shall not be denied any rights specified in this Constitution except only as shall be reasonably necessary for the security of the state and its citizens and maintenance of the penal institution."

PRESIDENT CASSELL: Okay. Those in favor of that motion --

MS. CORN: Isn't there debate for and against?

PRESIDENT CASSELL: Do we need any further debate on that?

MS. CORN: I'd like to speak for it.

PRESIDENT CASSELL: Would those people who are raising their hands respectfully consider that it has been very carefully laid out? I'm going to take one for and one against. Can we try that?

MR. KAMENY: On Rothschild or Clark, or both?

PRESIDENT CASSELL: Rothschild; that's what's on the

LER REPORTING CO., INC.
Massachusetts Avenue, N.E.
shington, D.C. 20002
2) 546-6666

floor. Delegate Robinson, delegate Garner.

MR. ROBINSON: I stand to speak against the substitute motion of delegate Rothschild. Implied here in this motion, sir, is involuntary servitude, and I don't believe that it should be inflicted upon prisoners solely because they are in prison. I would ask, based on that one point alone, that we resoundingly vote this down and move on to more substantive matters.

PRESIDENT CASSELL: Garner?

MR. GARNER: There being one for and one against, I call the question.

MS. CORN: I'd like to speak for it.

PRESIDENT CASSELL: Those in favor of cutting off debate on this, please signify by saying aye.

MS. CORN: Point of order.

(A chorus of "ayes.")

MS. CORN: Point of order, sir.

PRESIDENT CASSELL: Those opposed?

(No response.)

MS. CORN: Point of order.

PRESIDENT CASSELL: Those abstaining?

(No response.)

MS. CORN: Point of order.

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Vashington, D.C. 20002
202) 546-6666

MR. B. MOORE: Point of order, Mr. President.

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: State your point.

MS. CORN: The rules clearly state that if there are people who would like to speak for or against and two people have not spoken on each side, they may do so. Now, no one has spoken for this amendment.

PRESIDENT CASSELL: Yes, they have.

MS. CORN: I don't know if there are others. I would like to speak for it.

MS. HARRIS: Rothschild spoke for it.

PRESIDENT CASSELL: Maybe you should ask the Chair if anybody has spoken for it. Somebody has spoken for it; the maker of the motion has spoken for it, and there has been an argument against it.

Now, it seems to me, after all we've been through, that we could expedite this. We're really not a debating society, right? Can we vote on this? Is there some clarification yet that needs to be made on this? It's very, very simple; everybody understands it.

I understand your right, you know; democracy, we understand. Couldn't we vote and move on? Incidentally, I might tell you that the time is 10:53.

LLER REPORTING CO., INC.
0 Massachusetts Avenue, N.E.
ashington, D.C. 20002
02) 546-6666

MR. ROBINSON: We have one more to go.

PRESIDENT CASSELL: No, no, no. There are 23 of these sections and we're only on Section 10. Could we vote on this and get back to the original amendment?

Those in favor of the Rothschild amendment, indicate by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Please, a show of hands; those in favor, a show of hands.

MR. COOPER: Eight.

PRESIDENT CASSELL: Those opposed?

MR. BALDWIN: Delegate Corn, keep quiet.

MR. COOPER: Twenty-two.

PRESIDENT CASSELL: Those abstaining?

MR. COOPER: One.

PRESIDENT CASSELL: The motion loses. We are back to the first amendment, and that is to add at the end of the sentence "the state and its citizens" rather than "a penal institution." Those in favor of that amendment --

ILLER REPORTING CO., INC.
20 Massachusetts Avenue, N.E.
Washington, D.C. 20002
(202) 546-6666

MR. JACKSON: Mr. Chair, may I speak to this?

MR. KAMENY: He may speak for the committee.

PRESIDENT CASSELL: All right. The committee hasn't spoken on this; the committee, and then we vote.

MR. JACKSON: I know Mr. Clark carries a considerable amount of weight --

MR. COATES: We can't hear you, sir.

MR. JACKSON: I said I know you carry a considerable amount of weight with your stature as a City Council person.

MR. CLARK: I can't hear you.

MR. JACKSON: Twice is enough; I complimented you.

PRESIDENT CASSELL: Please proceed.

MR. JACKSON: What this says now, Mr. Chair, is that the convicted person is convicted also in the institution after he leaves, which means that any right the state wants to deny to a convicted prisoner, including the right to vote, it can deny. That is what it says. Now, maybe that is not the intent.

Once you put in "reasonably necessary for the security of the penal institution," it means that I, as a convicted person, will wear that red or black badge, or whatever, that's on my back forever, because you can say I'm a threat to the state or to its citizens, and therefore the

judge or the parole board or anyone can forever, ever and ever invoke conditions of servitude upon me. I don't think that is what is meant, but that's what we've got.

PRESIDENT CASSELL: Inasmuch as delegate Jackson has raised a substantive challenge, I'll ask you if you would like to reply.

MR. CLARK: The standard "reasonably necessary" will just have to suffice to answer that, Mr. Jackson. If a person is on life imprisonment and available for parole after seven years, as is now the case, then, in fact, yes, for the remainder of his term there could be conditions placed upon him if they were reasonably necessary to provide for the security of the state and its citizens.

It would seem to me very clear that voting restrictions would not be reasonably necessary for the protection of the state and its citizens. However, controls upon his ability to carry a weapon, controls upon his travel, controls upon his association with certain persons who were his victims, controls upon certain of his activities, would seem to me to be reasonably necessary for the protection of the society and its citizens.

The penal institution is part of that, but the only reason we placed the person in an institution in the first

place was not protect the penal institution, but to protect the society and its citizens.

MR. JACKSON: Just one point.

PRESIDENT CASSELL: Ladies and gentlemen, the time --

MR. JACKSON: Just one point.

PRESIDENT CASSELL: Hold it just a minute. The time is 10:57; that leaves us three more minutes to function here. Inasmuch as there is no other business that can be transacted, would you like to hear the reply to the last statement?

MS. EICHHORN: Call the question.

MR. JACKSON: Mr. Clark was a bit deceptive.

MS. CORN: Call the question.

MR. COATES: I don't want to hear it.

MR. JACKSON: Mr. Clark was a bit deceptive. He did not say anything in his motion about the length of time of the prison term. None of that is in there, which means that it doesn't say that, so the intent is unlimited.

MR. LOVE: He didn't say that.

MR. JACKSON: We're dealing with a constitution. The electorate does not know what he has said.

MS. EICHHORN: Vote.

MR. JACKSON: Mr. Chair, he is putting in false language there and it's very confusing.

PRESIDENT CASSELL: The motion on the floor now is the Clark amendment. Those in favor of the Clark amendment, indicate by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Those in favor of the Clark amendment, signify by raising your hands.

MR. COOPER: Nineteen.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Nine.

PRESIDENT CASSELL: Those abstaining?

MR. COOPER: One.

PRESIDENT CASSELL: Ladies and gentlemen, before you leave -- don't leave now; we can move the section.

MS. CORN: No. Point of order, Mr. President.

PRESIDENT CASSELL: I have not recognized you.

I have an announcement to make before you leave; don't anybody leave yet. You know what our schedule is. On Wednesday, we meet all day, starting at 10:00. We have passed around a list for you to sign. Only 13 people have signed that

list. If we cannot meet all day on Wednesday, that makes it even more unlikely that we will be ready for our second readings on the following day, right?

I'm suggesting that you reconsider. Can I see the hands of the people who are willing to meet at 10:00 on Wednesday morning? If we can get 23 people who will commit themselves, then we can meet. Mr. Secretary, would you count the number of people who are willing to meet on Wednesday morning at 10:00?

Please keep your hands up. Delegate Bruning, I don't know whether you know what we're voting on.

MR. BRUNING: I have my hand up.

PRESIDENT CASSELL: Please keep your hands up now, those who can meet Wednesday morning, and it's urgent that we do.

MR. COOPER: Well, I see 21.

PRESIDENT CASSELL: Okay, we've counted 21. Is there anybody who did not get an opportunity to vote on whether he or she would meet on Wednesday morning at 10:00?

(No response.)

PRESIDENT CASSELL: We're going to meet on Wednesday morning at 10:00, and hope that through the telephone canvass, at least two more people will meet so that we can conduct

business.

MR. KAMENY: Let's move Section 10 and get it out of the way.

PRESIDENT CASSELL: Okay.

MS. CORN: No. Point of order.

PRESIDENT CASSELL: Delegate Mason?

MS. CORN: Point of order.

MR. MASON: I move Section 10.

(The motion was duly seconded.)

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: It has been moved and seconded --

MS. CORN: I have an amendment that's there and in your possession in writing to this section. I therefore ask that this be --

MR. KAMENY: Let's get it out of the way.

MS. CORN: I move to adjourn. I move to adjourn, Mr. President.

MR. KAMENY: A motion is on the floor; you can't.

MS. CORN: A motion to adjourn is always in order. I move to adjourn.

(The motion was duly seconded.)

PRESIDENT CASSELL: Ladies and gentlemen, we really can't accomplish anything here.

MR. KAMENY: I call the question.

PRESIDENT CASSELL: We have completed Section 10.

MS. CORN: No.

PRESIDENT CASSELL: Ladies and gentlemen, we have completed Section 10.

MR. THOMAS: No.

MS. CORN: No.

MR. ROTHSCHILD: No.

MR. T. MOORE: We have not completed Section 10.

MS. CORN: We have not completed Section 10.

MR. BRUNING: That's right.

MR. KAMENY: I think I'll sit you down in the chair.

MS. CORN: Frank, don't be a fascist.

PRESIDENT CASSELL: For those who believe we have not completed Section 10, does that mean that there are further amendments?

MR. ROTHSCHILD: Yes.

MS. CORN: Yes.

PRESIDENT CASSELL: How many amendments are there?

MS. CORN: Mine.

PRESIDENT CASSELL: There are two amendments. We want to get an idea of what we have to deal with tomorrow.

Two amendments -- is that it?

MS. CORN: I move to adjourn.

PRESIDENT CASSELL: Four o'clock tomorrow, 10:00 Wednesday.

(Whereupon, at 10:59 p.m., the Convention was adjourned.)